

## REMARKS

### Double Patenting

The examiner stated in part:

4. Claim 17-29, 31-38 and 44-46 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-20 of copending Application No. 11/549,797 because both applications recite data processing rules being a set of time based rules, the time based rules including at least one of a direct rule that immediately instantiates offers based on an offer campaign, a triggered rule that instantiates offers based on the occurrence of particular conditions, and a stored rule that instantiates offers based on user interaction with previous offers.

While Applicant does not concede that the examiner's analysis of the claims of the two co-pending applications was correct, Applicant has amended claim 17 to remove the specific time based rule feature and has used time base rules with respect to scheduling delivery of offers in a channel. These have been made the subject of new claims 48-50. However, in view of the other amendments made to claims 17, 31 and 33 such new claims are directed to non-obvious features over the claims of the co-pending application. Therefore, a terminal disclaimer is not required between these applications.

### Claim Rejections - 35 USC § 103

The examiner rejected Claims 17-29, 31-38 and 44-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Benthin al. (2002/0035568 hereinafter Benthin) in view of Langseth et al. (6,694,316 hereinafter Langseth).

With respect to claims 17, 19-20, 25-27, 31, 33, 35-36,44

Benthin teaches a computer-controlled method for managing and distributing offers (abstract).

Producing a marketing campaign comprising a plurality of offers specified by offer data processing rules, executed by the computer, from which one or more of the offers are identified for targeting specific individuals being a set of time based rules, the time based rules including at least one of a direct rule that immediately instantiates offers based on an

offer campaign, a triggered rule that instantiates offers based on the occurrence of particular conditions, and a staged rule that instantiates offers based on user interaction with previous offers (i.e. controlling the presentation of when to transmit the offers to the customers, paragraphs 0031 and 0041 teaches automatic offers that are presented right away; paragraph 0030 teaches presenting the offers if it fit the customer profile and paragraph 0024 teaches the customer clicking on ads to determine which campaign of offers to present to the customer)(see also Figure 1); selecting one of the time based rules to determine a subsequent set of offers to send the specific individuals (see paragraph 0036); prioritizing by the computer the set of offers for an individual, with prioritizing being to determine which offer or offers from the set of offers should be sent to the individual from multiple offers associated with the individual and selecting a prioritized offer from the prioritized offers for presenting to the individual associated with those prioritized offers(see presentation parameters 14).

With respect to delivering the offers to the individuals over one of a plurality of different types of delivery channels associated with the offer. Langseth teaches selecting the advertisements or offers based on the capability of the channels to the selected offers. Langseth teaches selecting from a plurality of channels which advertisements to place based on the channel capacity and content of the channel.

Langseth, clearly teaches in step 928, the advertisements being selected based on the channel being run or the capacity of the channel. Each channel accommodates or is capable of outputting different types of ads. For example, a golf site may only enable access to a sports channel. It would have been obvious to a person of ordinary skill in the art at the time of Applicant's invention to have included in the system of Benthin the teachings of Langseth of presenting the offers to the individuals over one of a plurality of delivery channels associated with the offer because such a modification would "provide a readable available medium for delivery of the right information at the right time" (Langseth col. 3, lines 6-10).

Claim 17, as currently amended, is directed to "A computer implemented method for managing and distributing offers," as previously presented. However, Applicant has clarified the features of the method focusing the feature of an delivery mechanism for plural marketing campaigns.

Accordingly, claim 17 requires: "producing a plurality of marketing campaigns each comprising ... offers to send to multiple targeted individuals with the offers ... determined ... computers for ... the ... campaigns ... according to a determined channel allocation of such offers specified by offer data processing rules ... from which ... offers are identified for targeting specific individuals and delivering the offers over channels to specific, targeted individuals ... the channels and time of delivery ... based on execution of time based rules and the allocation of the

offers to the channels based on the determined allocations in each of the marketing campaigns with the channels being ... different types of delivery channels,”

No combination of Benthin in view of Langseth describes or renders obvious at least the foregoing features. Benthin, as the examiner concedes, does not describe or suggest the delivery component, as was previously claimed. Clearly therefore, Benthin neither describes nor would render obvious “delivering the offers over channels to specific, targeted individuals ... the channels and time of delivery ... based on execution of time based rules and the allocation of the offers to the channels based on the determined allocations in each of the marketing campaigns with the channels being ... different types of delivery channels.”

While the examiner states that:

**With respect to delivering the offers to the individuals over one of a plurality of different types of delivery channels associated with the offer. Langseth teaches selecting the advertisements or offers based on the capability of the channels to the selected offers. Langseth teaches selecting from a plurality of channels which advertisements to place based on the channel capacity and content of the channel.**

Langseth does not teach the claimed offers *per se*, but merely teaches personalized messages, e.g., advertisements and broadcast content. As used by Applicant offers are more encompassing, which necessitates a more sophisticated delivery mechanism than that needed by a reference that merely delivers web content (which is one of the channels described but as claimed the claims require multiple channels). It is clear therefore, that Langseth would not teach “delivering the offers over channels to specific, targeted individuals ... the channels and time of delivery ... based on execution of time based rules and the allocation of the offers to the channels based on the determined allocations in each of the marketing campaigns with the channels being ... different types of delivery channels,” because Langseth does not teach plural marketing campaigns that delivery offers over plural channel where the channels are different types of channels.

Benthin while directed to marketing campaigns does not teach: “producing a plurality of marketing campaigns each comprising ... offers to send to multiple targeted individuals with the

offers ... determined ... computers for ... the ... campaigns ... according to a determined channel allocation of such offers specified by offer data processing rules ... from which ... offers are identified for targeting specific individuals,” as the examiner has already conceded. Accordingly, claims 17, 31 and 33 are patentable over the cited references.

Claims 18, 23-24, 34

The examiner also takes the position that:

Claims 18, 23-24, 34 further recite determining a channel to select based on user response to an offer. Official Notice is taken that it is old and well known in marketing to determine how well user's response to ads on TV versus ads in the radio in order to select how the ads are going to be delivered based on the user's responses. It would have been obvious to a person of ordinary skill in the art at the time of Applicant's invention to have included determining a channel to select based on user response to an offer in order to allow the advertisers to determine the best delivery medium.

This alleged official notice is of absolutely no import to the claimed subject matter. These claims do not claim “how well users response to ads on TV versus ads in the radio in order to select how the ads are going to be delivered based on the user's responses.” While marketing feedback is a general concept, Applicant's claims are directed to individualized offers that are sent to individuals responses from which are tracked (see Applicant's specification [0034]). No such functionality is involved with the proffered official notice. Claim 18 for instance requires: “... determining a channel to select based at least in part on a user's response to an offer.” Such functionality is not suggested much less described by the purported official notice. How does the purported official notice gauge a user's (or as claimed the specific targeted individual) response to an ad on TV vs. radio? What mechanism measures that response and what exactly is the response required by the purported official notice?

Similarly, the official notice is of no import to claim 23, which requires information from the specific, targeted individual and limiting selection of the offer for delivery to the specific, targeted individual according to the accepted information.” The official notice does not even

address acceptance of information from a specific, targeted individual let alone limiting selection of the offer according to the accepted information.

Claim 24, which requires that "... the accepted information characterizes acceptable timing of presentation of offers to the specific, targeted individual, and limiting selection of the offer includes scheduling selection of the offer to the specific, targeted individual according to the acceptable timing," is likewise not suggested by the proffered official notice.

Claims 21-22, 37-38

The examiner also stated that:

**Claims 21-22, 37-38 further recite the capacity of the channels being related to the monetary cost of the channel. Official notice is taken that it is old and well known for monetary and operating cost being related to the capacity of the channels. For example, CNN will have a higher capacity than a local smaller channel with a smaller budget. It would have been obvious to have included the capacity of the channels being related to the monetary cost of the channel because such a modification would allow the channels to invest and better maintain the channels in order to have a higher chances (sic) of being selected.**

With all due respect, this official notice is clearly irrelevant to the claimed subject matter, as claimed. The claim requires that allocation of offers to individuals be related to monetary and capacity costs. While one can understand that channels have monetary costs and capacity constraints, the feature that is of import, namely the claimed allocation "producing a plurality of marketing campaigns each comprising a plurality of offers ... determined ... for each of the plurality of marketing campaigns ... according to a determined channel allocation of such offers specified by offer data processing rules" that take into consideration monetary and capacity costs are clearly not suggested by the references taken with the alleged official notice.

Claims 21-22, 37-38

The examiner stated:

**With response to claims 28-29, 32 and 45-46, Benthin further teaches reporting the effectiveness of the plurality of offers and presenting a sequence of related offers to those individuals based on the individuals activities (i.e. tracking offers effectiveness in order to further target further offers to the individuals) (paragraphs 0082-0088)**

Claim 28 requires the feature of: "tracking activities of the targeted individuals to whom the offers were targeted according to the channels over which the offers were sent and determining by the one or more computers an effectiveness of the plurality of offers by matching information received from sources of activity related information to the offers." Claim 29 requires: "delivering through channels selected from the plurality of channel a sequence of subsequent offers to individuals based on their tracked activities."

The alleged combination of Benthin, Langseth and official notice neither describes nor renders obvious tracking over the channels over which the offers were delivered, matching information to the offers or delivering through the channels subsequent offers based on the tracked activities.

#### Examiner's Response to Applicant's Arguments

The examiner's Response to Applicant's arguments presented in the instant action is deemed moot in view of the amendments.

However, to clarify the record with respect to the claims previously presented, Benthin describes: "The campaign editor may be used to specify the content to be automatically presented to a customer by specifying a particular template for an HTML page presentation." and "A campaign is a set of content and presentation rules used to target a promotion to a specified user group, following a specific schedule." Nothing in these excerpts from Benthin, or the complete teachings as referenced in Applicant's prior reply, suggests the concept of time based rules, as was previously claimed, and now the subject of new claims 48-50, notwithstanding the examiner's attempt to modify Benthin though the examiner's response below:

**The Examiner disagrees with Applicant because The Examiner disagrees with Applicant because Benthin teaches different time to present**

the offers to the customer such as certain offers are presented right away (i.e. specify the content to be automatically presented to the specific customer on paragraph 0031), other offers are presented based on the timing of a certain conditions, such as the user clicking on certain ads (i.e. clicking on a link on paragraph 0024) and in addition certain offers presented in stages such as building a customer profile and then presenting different offers to the customers (i.e. offers based on customer's profile, paragraph 0024). As can be seen by Benthin above, Benthin teaches subsequent offers specific to certain condition that must be met by the offers to whom the offers are sent at the time such as what the users are currently clicking on, user's profile etc.

The examiner obfuscates interactions between a user and a web browser with the claimed time based rules. These are clearly neither the same nor do they resemble each other. Nothing in Benthin or the combination of references suggests: "at least one of the offer data processing rules being a set of time based rules, the time based rules including at least one of a direct rule that immediately instantiates offers based on an offer campaign, a triggered rule that instantiates offers based on the occurrence of particular conditions, and a staged rule that instantiates offers based on user interaction with previous offers." or "selecting one of the time based rules to determine a subsequent set of offers to send to the specific individuals," as generally recited in new claims 48-50.

It is believed that all the rejections and/or objections raised by the examiner have been addressed.

In view of the foregoing remarks, applicant respectfully submits that the application is in condition for allowance and such action is respectfully requested at the examiner's earliest convenience.

All of the dependent claims are patentable for at least the reasons for which the claims on which they depend are patentable.

Canceled claims, if any, have been canceled without prejudice or disclaimer.

Any circumstance in which the applicant has (a) addressed certain comments of the examiner does not mean that the applicant concedes other comments of the examiner, (b) made arguments for the patentability of some claims does not mean that there are not other good

Applicant : Christopher P. Bergh et al.  
Serial No. : 09/777,614  
Filed : February 5, 2001  
Page : 17 of 17

Attorney's Docket No.: 10235-0048001

reasons for patentability of those claims and other claims, or (c) amended or canceled a claim does not mean that the applicant concedes any of the examiner's positions with respect to that claim or other claims.

Respectfully submitted,

Date: March 17, 2011

/Denis G. Maloney/  
Denis G. Maloney  
Reg. No. 29,670

Customer Number 26161  
Fish & Richardson P.C.  
Telephone: (617) 542-5070  
Facsimile: (877) 769-7945